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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 MUHAMMED TILLISY,

11 Plaintiff,

12 v.

13 DEPARTMENT OF CORRECTIONS,
14 et al.,

15 Defendants.

CASE NO. 3:18-cv-05695-RJB-JRC

ORDER TO SHOW CAUSE OR
AMEND

16 Plaintiff Muhammed Tillisy, proceeding *pro se* and *in forma pauperis*, filed this civil
17 rights complaint pursuant to 42 U.S.C. § 1983 and Title II of the Americans with Disabilities Act
18 (“ADA”). Having reviewed and screened plaintiff’s Complaint under 28 U.S.C. § 1915A, the
19 Court finds that plaintiff has failed to state a claim, but provides plaintiff leave to file an
20 amended pleading by November 9, 2018, to cure the deficiencies identified herein.

21 **BACKGROUND**

22 Plaintiff filed this action in August of 2018. Dkt. 1. After receiving a letter from the Clerk
23 explaining his application to proceed *in forma pauperis* was deficient, Dkt. 2, plaintiff filed a
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1 new motion for leave to proceed *in forma pauperis*, Dkt. 4, which the Court granted, Dkt. 7.
2 Plaintiff's complaint contains four allegations. Dkt. 8. He argues that defendants violated his
3 Eighth Amendment protections and Fourteenth Amendment protections because he has vision
4 and hearing impairments, and defendants failed to provide him with hearing aids and other
5 accommodations. *Id.* He also argues that, when he raised concerns because he was being denied
6 accommodations, defendants retaliated by placing him in the intensive management unit
7 ("IMU") and transferring him between prison facilities. *Id.* He states that he complained of his
8 lack of accommodations both to defendant Bovenkamp and defendant Gaspar, but that neither of
9 them remedied the situation. *Id.* Plaintiff also argues he is entitled to recovery pursuant to Title II
10 of the ADA for Defendants' failure to accommodate his disabilities. *Id.* Included with his
11 complaint, plaintiff has also provided an attachment with additional factual allegations in support
12 of his complaint. *See Id.*, p. 16.

13 **DISCUSSION**

14 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
15 complaints brought by prisoners seeking relief against a governmental entity or officer or
16 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must "dismiss the
17 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to
18 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
19 who is immune from such relief." *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,
20 152 F.3d 1193 (9th Cir. 1998).

21 Plaintiff's complaint suffers from deficiencies requiring dismissal if not corrected in an
22 amended complaint.
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1 **I. Section 1983 Claims**

2 Plaintiff has included claims of constitutional violations pursuant to 42 U.S.C. § 1983. In
3 order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he suffered a
4 violation of rights protected by the Constitution or created by federal statute, and (2) the
5 violation was proximately caused by a person acting under color of state law. *See Crumpton v.*
6 *Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to
7 identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271
8 (1994). Plaintiff must then allege facts showing how individually named defendants caused, or
9 personally participated in causing, the harm alleged in the complaint. *See Arnold v. IBM*, 637
10 F.2d 1350, 1355 (9th Cir. 1981).

11 **A. Retaliation**

12 To prevail on a retaliation claim under § 1983, a plaintiff must first allege that the
13 retaliated-against conduct is protected. *Id.* Second, plaintiff must claim that a defendant took an
14 adverse action against plaintiff, *Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir. 2005), but the
15 adverse action does not need to be an independent constitutional violation, *Pratt v. Rowland*, 65
16 F.3d 802, 806 (9th Cir. 1995). Third, the plaintiff must allege a causal connection between the
17 adverse action and the protected conduct. *Brodheim*, 584 F.3d at 1269; *Rhodes*, 408 F.3d at 567.
18 Fourth, the plaintiff must allege that the defendant's actions chilled the plaintiff's exercise of his
19 protected rights. *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009). Finally, plaintiff must
20 allege that "the action did not reasonably advance a legitimate correctional goal." *Brodheim*, 584
21 F.3d at 1269. "A plaintiff successfully pleads this element by alleging, in addition to a retaliatory
22 motive, that the defendant's actions were arbitrary and capricious, or that they were 'unnecessary
23 to the maintenance of order in the institution.'" *Watison*, 668 F.3d at 1114-15 (internal citation
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1 omitted) (quoting *Franklin v. Murphy*, 745 F.2d 1221, 1230 (9th Cir. 1984)). Further, a
2 regulation or application of a regulation reasonably advances a legitimate penological interest if
3 there is a “‘valid, rational connection’ between the prison regulation and the legitimate
4 governmental interest put forward to justify it.” *Shaw v. Murphy*, 532 U.S. 223, 229 (2001)
5 (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)). The Court also considers whether there is a
6 “more likely” explanation for allegedly unlawful conduct. *Ashcroft v. Iqbal*, 556 U.S. 662, 681
7 (2009).

8 Here, plaintiff alleges that he was retaliated against when he complained that he was not
9 receiving accommodations for his disabilities. Dkt. 8, p. 12. He argues that he requested
10 accommodations, and, rather than providing the accommodations, that he was placed in the IMU.
11 *Id.* However, plaintiff has failed to adequately allege that his transfer to the IMU was because of
12 him engaging in protected conduct. Plaintiff has failed to state who transferred him to the IMU,
13 or otherwise indicate that the transfer to the IMU was caused by his request for accommodations.
14 Rather, he makes a bare allegation that he was placed in the IMU “with false infractions” after he
15 requested accommodations. *Id.* He also states he was placed in the IMU “for dis[ci]plenary
16 reasons,” but does not explain why those disciplinary reasons were illegitimate. *Id.*, p. 16.
17 Without additional factual allegations indicating that plaintiff was placed in the IMU *because* he
18 was engaging in some protected conduct, plaintiff has not stated a claim for retaliation. Thus,
19 plaintiff has not yet stated a claim for which relief may be granted, and the Court declines to
20 serve plaintiff’s complaint insofar as he alleges that defendants retaliated against him.

21 B. Conditions of Confinement

22 Read liberally, plaintiff may also allege that defendants acted with deliberate indifference
23 when they denied him accommodations for his disability. To state a claim for unconstitutional
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1 conditions of confinement, a plaintiff must allege that a defendant's acts or omissions have
2 deprived the inmate of “the minimal civilized measure of life's necessities” and that the
3 defendant acted with deliberate indifference to an excessive risk to inmate health or safety. *Allen*
4 *v. Sakai*, 48 F.3d 1082, 1087 (9th Cir. 1994) (quoting *Farmer*, 511 U.S. at 834); see *Estate of*
5 *Ford v. Ramirez—Palmer*, 301 F.3d 1043, 1049–50 (9th Cir. 2002). “The circumstances, nature,
6 and duration of a deprivation of [] necessities must be considered in determining whether a
7 constitutional violation has occurred.” *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000), *cert.*
8 *denied*, 532 U.S. 1065 (2001).

9 To violate the Cruel and Unusual Punishments Clause, a prison official must have a
10 sufficiently culpable state of mind.” *Id.* at 834 (internal quotations omitted). “In prison-
11 conditions cases th[e] state of mind is one of ‘deliberate indifference’ to inmate health or
12 safety[.]” *Id.* (citing *Wilson v. Seiter*, 501 U.S. 294, 302-03 (1991)). A prison official does not act
13 with deliberate indifference “unless the official knows of and disregards an excessive risk to
14 inmate health or safety.” *Farmer*, 511 U.S. at 837.

15 Plaintiff alleges that he notified Defendants Bovenkamp and Gaspar of his disabilities
16 and need for accommodation, but that they both ignored his complaints. Dkt. 8, p. 14. He also
17 argues that both he and his family contacted defendants, stating that he needed to be transferred
18 to a different facility with the capacity to accommodate his disabilities, but that defendants
19 ignored his request and continued to keep him in facilities that could not accommodate his
20 disabilities. *Id.*, pp. 17-18. Though plaintiff may state a claim as to accommodations for his
21 hearing and eyesight, plaintiff has again failed to demonstrate how defendants acted with
22 deliberate indifference as to denial of his sweatpants and his medical mattress. Plaintiff has not
23 alleged any facts that would indicate defendants knew of, yet disregarded, plaintiff’s need for a
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1 mattress or sweatpants. He also has not shown that either of those accommodations were to
2 address a serious medical need. Thus, plaintiff has not yet stated a claim for which relief may be
3 granted insofar as he alleges defendants denied him a mattress and sweatpants, and the Court
4 declines to serve plaintiff's complaint as to those claims.

5 C. Personal Participation

6 To state a claim under 42 U.S.C. § 1983, plaintiff must allege facts showing how a
7 defendant caused or personally participated in causing the harm alleged in the complaint. *Leer v.*
8 *Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *Arnold*, 637 F.2d at 1355. A person subjects another
9 to a deprivation of a constitutional right when committing an affirmative act, participating in
10 another's affirmative act, or failing to perform an act which is legally required. *Johnson v. Duffy*,
11 588 F.2d 740, 743 (9th Cir. 1978). Sweeping conclusory allegations against an official are
12 insufficient to state a claim for relief. *Leer*, 844 F.2d at 633.

13 Though plaintiff alleges personal participation as to many of his Defendants, he has also
14 included broader allegations where he does not specify the actor who allegedly harmed him. For
15 example, though he states that he notified "Risa Kremme" that he required accommodations for
16 his disability, he also generally stated he "was placed" in housing with no disability
17 accommodations – he does not allege who transferred him, or why they did so. *See* Dkt. 8, p. 12.
18 He generally alleges that "CBCC staff" moved plaintiff between housing units, and that he "was
19 denied" accommodations, without explaining who denied the accommodations or what the
20 specific accommodations were. Thus, plaintiff has failed to state a claim for which relief may be
21 granted as to the personal participation of several defendants and the Court declines to serve
22 plaintiff's complaint as to those claims.

II. ADA Violations

Plaintiff claims he can recover directly under the ADA for defendants' unlawful failure to accommodate his disabilities. "To state a claim of disability discrimination under Title II of the ADA, the plaintiff must allege four elements: (1) the plaintiff is an individual with a disability, (2) the plaintiff is otherwise qualified to participate in or receive the benefit of some public entity's services, programs, or activities, (3) the plaintiff was either excluded from participation in or denied the benefits of the public entity's services, programs, or activities, or was otherwise discriminated against by the public entity, and (4) such exclusion, denial of benefits, or discrimination was by reason of the plaintiff's disability." *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002); *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001), *as amended on denial of reh'g* (Oct. 11, 2001); 42 U.S.C. § 12132.

Here, plaintiff argues that he was denied hearing and visual aids, as well as sweatpants and a medical mattress, in violation of the ADA. Dkt. 8, pp. 14, 16. He has adequately alleged that he has visual and hearing impairments that qualify him as an individual with a disability under the ADA. *Id.*, p. 16. He has also adequately alleged that he was denied services related to his hearing and vision impairments. *Id.* However, plaintiff has not alleged that he was otherwise qualified to receive the benefit of some of the other services he was denied.

Plaintiff argues he was denied a medical mattress and sweatpants. *Id.*, p. 14. However, aside from indicating plaintiff has had surgery that left him "with a plate in his head after brain surgery," *Id.* p. 13, he has not indicated why he requires a medical mattress or sweatpants, and further has not indicated that he is otherwise qualified to receive those services. As noted above, plaintiff must not only show that he is impaired and that he was denied services, but also that he is otherwise entitled to those services he was denied. Thus, plaintiff has not yet alleged a claim

1 for which relief may be granted pursuant to Title II of the ADA as to the medical mattress and
2 sweatpants, and the Court declines to serve plaintiff's complaint insofar as he alleges a violation
3 of the ADA.

4 **III. Short and Plain Statement**

5 Finally, the Court had difficulty discerning plaintiff's allegations in his complaint.
6 Though he enumerated several claims in his complaint, Dkt. 8, pp. 12-14, he also included a
7 series of additional allegations, ranging from denial of accommodations to retaliation, in an
8 attached document entitled "attachment B," *Id.*, pp. 16-21.

9 When plaintiff files his amended complaint, he should include a short and plain
10 statement, describing his alleged constitutional violations, who allegedly committed those
11 violations, and how plaintiff was harmed. Though he may include exhibits or affidavits, such
12 attachments are unnecessary for the Court to screen and serve plaintiff's complaint at this time.

13 **IV. Instructions to Plaintiff and Clerk**

14 Due to the deficiencies described above, the Court will not serve plaintiff's complaint. If
15 plaintiff intends to continue pursuing a § 1983 civil rights action in this Court, he must file an
16 amended complaint and within the amended complaint, he must write a *short, plain statement*
17 telling the Court: (1) the constitutional or federal right plaintiff believes was violated; (2) the
18 name of the person or persons who violated the right; (3) *exactly what the individual did or*
19 *failed to do*; (4) how the action or inaction of the individual is connected to the violation of
20 plaintiff's constitutional or federal rights; and (5) what specific injury plaintiff suffered because
21 of the individual's conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976).

22 In addition, if plaintiff wishes to pursue a claim pursuant to Title II of the ADA, plaintiff
23 should show: (1) that he is an individual with a disability; (2) that he is being denied the benefit
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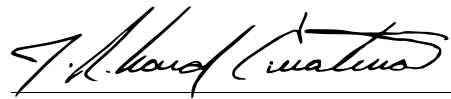
1 of a service offered by a public entity; (3) *that he is otherwise qualified to receive the benefit of*
2 *that service*; and (4) that the denial of the service was by reason of plaintiff's disability.
3 *Thompson*, 295 F.3d at 895.

4 Plaintiff shall present the amended complaint on the form provided by the Court. The
5 amended complaint must be legibly rewritten or retyped in its entirety, it should be an original
6 and not a copy, it should contain the same case number, and it may not incorporate any part of
7 the original complaint by reference. The amended complaint will act as a complete substitute for
8 the original complaint, and not as a supplement. An amended complaint supersedes the original
9 complaint. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) *overruled in part on*
10 *other grounds*, *Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012). Therefore, the
11 amended complaint must be complete in itself and all facts and causes of action alleged in the
12 original complaint that are not alleged in the amended complaint will be waived. *Forsyth*, 114
13 F.3d at 1474. The Court will screen the amended complaint to determine whether it contains
14 factual allegations linking each defendant to the alleged violations of plaintiff's rights. The Court
15 will not authorize service of the amended complaint on any defendant who is not specifically
16 linked to a violation of plaintiff's rights.

17 If plaintiff fails to file an amended complaint or fails to adequately address the issues
18 raised herein **on or before November 9, 2018**, the undersigned will recommend dismissal of this
19 action without prejudice, meaning plaintiff may file it again at a later date.

1 The Clerk is directed to send plaintiff the appropriate forms for filing a 42 U.S.C. § 1983
2 civil rights complaint and for service. The Clerk is further directed to send copies of this order
3 and Pro Se Instruction Sheet to plaintiff.

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5 Dated this 4th day of October, 2018.

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9 J. Richard Creatura
10 United States Magistrate Judge
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